



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 220720-0160]

RIN 0648-BK93

Pacific Halibut Fisheries; Catch Sharing Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: Under the authority of the Northern Pacific Halibut Act of 1982, this action would create a permitting system for the Pacific halibut commercial and recreational charter halibut fisheries in International Pacific Halibut Commission (IPHC) Regulatory Area 2A off of Washington, Oregon, and California. In addition, this action would establish a regulatory framework for the Area 2A Pacific halibut directed commercial fishery that, consistent with the allocations and coastwide season dates set by the IPHC, allows NMFS to annually determine dates and times the fishery is open and set harvest limits for those periods of time. These permitting and management activities for Area 2A are currently performed by the IPHC; under this proposed rule, NMFS will implement these Area 2A-specific permitting and management activities.

DATES: Comments must be received on or before *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2020-0090, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2020-

0090 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Scott Rumsey, c/o Kathryn Blair, West Coast Region, NMFS, 1201 NE Lloyd Blvd Suite 1100, Portland, OR, 97232.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted at the following website: www.reginfo.gov/public/do/PRAMain.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, phone: 562-980-4034, fax: 562-980-4018, or e-mail: joshua.lindsay@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773-773k, gives the Secretary of Commerce (Secretary) general responsibility for implementing the provisions of the Convention between Canada and the United States for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Halibut Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The Halibut Act requires that the Secretary shall adopt regulations as may be necessary to carry out the purposes and objectives of the Halibut Convention and Halibut Act. 16 U.S.C. 773c. The Assistant Administrator for Fisheries, National Oceanic and Atmospheric

Administration (NOAA), on behalf of the IPHC, publishes annual management measures governing the Pacific halibut fishery that have been recommended by the IPHC and accepted by the Secretary of State, with concurrence from the Secretary of Commerce. These management measures include coastwide and area-specific mortality limits (also known as allocations and subarea allocations), coastwide season dates, gear restrictions, Pacific halibut size limits for retention, and logbook requirements, among others. The IPHC apportions allocations for the Pacific halibut fishery among regulatory areas: Area 2A (Washington, Oregon, and California), Area 2B (British Columbia), Area 2C (Southeast Alaska), Area 3A (Central Gulf of Alaska), Area 3B (Western Gulf of Alaska), and Area 4 (subdivided into 5 areas, 4A through 4E, in the Bering Sea and Aleutian Islands of Western Alaska).

Additionally, as provided in the Halibut Act, the Regional Fishery Management Councils having authority for the geographic area concerned may develop, and the Secretary of Commerce may implement, regulations governing harvesting privileges among U.S. fishermen in U.S. waters that are in addition to, and not in conflict with, approved IPHC regulations (16 U.S.C. 773c(c)). The Pacific Fishery Management Council (Council) has exercised this authority by developing a catch sharing plan guiding the allocation of halibut, and management of recreational (or sport) fisheries for the IPHC's regulatory Area 2A. The Council's Catch Sharing Plan guides tribal, non-tribal commercial, and recreational halibut fishing off the U.S. west coast by prescribing an allocation formula for the allowable catch, and by describing the general season structure of the fisheries. Since 1988, the National Marine Fisheries Service (NMFS) has approved Catch Sharing Plans and implemented annual regulations consistent with the Catch Sharing Plans that allocate the IPHC regulatory Area 2A Pacific halibut allocation between tribal and non-tribal, and commercial and recreational harvesters. In 1995, NMFS approved a Council-recommended, long-term Catch Sharing Plan (60 FR 14651, March 20, 1995). The Council has recommended and NMFS has approved adjustments to the Catch Sharing Plan each year after discussion at the September and November Council meetings to address the changing needs of

these fisheries. In addition, each year NMFS issues management measures to govern the recreational fishery (50 CFR 300.63(b)(1)). These measures include the recreational fishery seasons, allocations, closed areas, and bag limits for Area 2A.

Currently, the IPHC regulates and manages certain aspects of the commercial and recreational charter fisheries in Area 2A. As required under IPHC regulations, in order for a vessel to fish for Pacific halibut in Area 2A, either in the recreational charter fishery or the commercial fishery, the vessel must have a permit issued by the IPHC. (The term ‘permit’ is synonymous with ‘license.’ IPHC documents generally use ‘license’ and NMFS in this rule uses ‘permit.’) Specifically, the IPHC issues permits for Area 2A vessels participating in the recreational charter fishery and three non-tribal commercial fisheries: a directed commercial fishery, incidental catch of Pacific halibut in the West Coast sablefish fishery, and incidental catch of Pacific halibut in the West Coast salmon troll fishery. In addition, the IPHC sets management measures for the non-tribal directed commercial Pacific halibut fishery (directed commercial fishery), including fishing periods and associated fishing period limits which are announced via IPHC media releases. A fishing period is the period of time during the annual halibut season set by the IPHC when fishing for Pacific halibut is allowed and may span multiple days. A fishing period limit is the maximum amount of Pacific halibut that may be retained and landed by a vessel during one fishing period, and each vessel may only retain Pacific halibut up to the fishing period limit for its vessel class.

As part of this process, the IPHC sets an initial fishing period and fishing period limit in Area 2A for the directed commercial fishery and, if the IPHC determines that the directed commercial fishery allocation for Area 2A has not been exceeded or is not projected to be exceeded after the first fishing period, announces subsequent fishing periods and associated fishing period limits until the Area 2A allocation is or is projected to be reached. Over the last ten years, the number of fishing periods per year has varied between two and five fishing periods. The fishing season for the directed commercial fishery typically operates from late June

through August, with fishing periods every other week until the Area 2A directed commercial fishery allocation has been or is projected to be reached. In the past six years (2016-2021), all but one year had three fishing periods; in 2020 there were five fishing periods. Between 2016 and 2021, the directed commercial allocation in Area 2A has ranged between 193,364 and 256,122 lb. (87.71 and 116.18 mt), and the IPHC set fishing periods and fishing period limits to remain within this allocation. As described previously, the Area 2A allocation is determined on an annual basis by the IPHC and may vary from year to year; therefore the directed commercial allocation, as derived through the Catch Sharing Plan's allocation framework, may vary on an annual basis. For most fishing periods during the 2016-2021 seasons, limits were generally set in ascending order, with smaller vessels receiving a lower limit and larger vessels receiving a higher limit. During the past six years, IPHC set one fishing period where all vessel classes were subject to the same fishing period limit. Prior to 2020, fishing periods were 10 hours, and, when setting limits, the IPHC considered the feasibility of a vessel achieving the fishing period limit within this duration of time. The fishing periods were extended to 58 hours starting in 2020, after a recommendation from the Council to the IPHC and subsequent approval by NMFS, and the IPHC began to set limits under the assumption that more vessels would fish for and achieve the fishing period limit given the extended time for fishing.

Under this proposed action, NMFS would carry out some of the previously mentioned management activities currently conducted by the IPHC. Specifically, NMFS would assume responsibility for issuing vessels permits to fish for Pacific halibut in commercial and recreational charter fisheries in Area 2A, and for issuing annual management measures for the directed commercial fishery. These actions would be in addition to actions NMFS already undertakes such as issuing annual management measures for the Area 2A recreational fisheries (applicable to both charter and private anglers), consistent with the recommendations from the Council and the framework in the Council's Catch Sharing Plan.

Between 2017 and 2019, NMFS, the IPHC, and the Council discussed transitioning specific management activities of the Area 2A fishery from IPHC to NMFS as NMFS and the Council were seen as being able to better address the overlap of Pacific halibut management with domestic fisheries (*e.g.*, groundfish and salmon). At the June 2019 Council meeting, IPHC, NMFS, and the Council agreed to move forward with this transition, with a goal of completing the transition as expeditiously as possible, while maintaining the current management process and structure to minimize disruption in fishery operations. The Council heard public and industry perspectives on the transition of management of the Area 2A commercial halibut fisheries from IPHC to NMFS at its March, September, and November 2020 meetings. In developing this rule, NMFS took into account recommendations from the Council finalized at their November 2020 meeting.

The Council recommended NMFS adopt several permit management measures: issuing permits for all fisheries currently permitted by the IPHC, consisting of the directed, incidental sablefish and salmon commercial fisheries, and recreational charter vessels; setting permit application deadlines; and requiring proof of permit to be on the fishing vessel and made readily available upon request, regardless of the type of permit (*i.e.*, paper or electronic). NMFS considered these recommendations in proposing this rule.

During these Council discussions, the Council also noted that their intention was to continue to discuss directed commercial fishery management for upcoming fishing seasons during its September and November meetings, which are the same meetings during which the Council had previously developed recommendations for the IPHC on the directed commercial fishery, and during which it currently considers recommendations for the Area 2A recreational fishery and other recommendations to the IPHC.

Permitting for Commercial and Recreational Charter Vessels

Currently, no person shall fish for Pacific halibut from a vessel, nor possess Pacific halibut on board a vessel, used either for commercial fishing or as a charter vessel in Area 2A,

unless the IPHC has issued a permit valid for fishing in Area 2A to that vessel. Under this proposed rule, NMFS would maintain this requirement for vessels to obtain a permit and would implement a NMFS permitting process. The IPHC issues permits for Area 2A fisheries through a website application and sets permit application deadlines to allow for processing and distribution of permits that aligns with start dates of the incidental and directed commercial fisheries. Under this action, NMFS proposes to use a web-based application with digital submission and delivery of the permit applications and proposes to allow participants to provide either digital or paper proof of permit upon request. Prior to 2020, only the official paper permit mailed by the IPHC to the applicant was allowed for enforcement purposes; after Council discussion with industry and enforcement representatives, the Council recommended that either digital or paper permits are acceptable, as there are no enforcement concerns with either format. NMFS is proposing applications for permits to fish for halibut in Area 2A be required to be submitted by the following dates: 1) incidental salmon fishery permit applications by March 1; 2) incidental sablefish fishery permit applications by March 1; 3) directed commercial fishery permit applications by February 15; and 4) recreational charter vessel applications 15 days prior to participation in the fishery.

NMFS notes that the permit application deadlines for the incidental salmon and sablefish fisheries are two weeks earlier than the same deadlines required by the IPHC (prior to 2020, the incidental sablefish permit deadline was March 15), and are one month before the fisheries open on April 1. The proposed deadline for the directed commercial fishery permit applications is over two months earlier than the existing IPHC deadline for this fishery. The earlier application deadlines will ensure adequate time for NMFS to issue permits in advance of the fishery season start dates and consider the number of applications when determining fishing period limits for the directed commercial fishery. NMFS will issue permits for all applications submitted with the required information and by the applicable deadline under this action. NMFS intends to require application information in addition to what the IPHC requires; specifically, those applying for

directed commercial fishery permits must provide vessel length documentation from either the U.S. Coast Guard, state registration form, or a current marine survey. Fishery participants must obtain a new permit each year in order to participate in the Pacific halibut commercial and recreational charter fisheries in Area 2A.

The Regional Administrator may charge fees to cover administrative expenses related to processing and issuance of permits, processing change in ownership or change in vessel registration, divestiture, and appeals of permits. The amount of the fee would be determined in accordance with the NOAA Finance Handbook available at (https://www.corporateservices.noaa.gov/finance/documents/NOAAFinanceHBTOC_09.06.19.pdf) and specified on the application form. The fee may not exceed the administrative costs and must be submitted with the application for the application to be considered complete.

Directed Commercial Fishery

The non-tribal directed commercial Pacific halibut fishery is prosecuted in the area south of Point Chehalis, WA (46°53.30' N lat.). As discussed previously, the IPHC currently manages the fishery through a series of fishing periods with fishing period limits based on the directed commercial fishery allocation distributed by vessel class. The IPHC permit application deadline for this fishery is currently April 30 and the first fishing period limits are announced by the IPHC in mid-to-late May, in advance of the first fishing period (which historically has occurred in late June). This fishery typically operates from late June through August, with fishing periods every other week until the Area 2A directed commercial fishery allocation has been or is projected to be reached. The IPHC uses fishing period limits based on vessel class and the number of permits issued to help the fishery attain the Area 2A directed commercial fishery allocation while ensuring it is not exceeded. Under this proposed action, NMFS, instead of the IPHC, would implement annual management measures for the directed commercial fishery. Specifically, NMFS will implement directed commercial fishing period(s) and fishing period limits annually

through annual proposed and final rules published in the **Federal Register** to ensure the directed commercial fishery allocation is not exceeded.

NMFS will consider any Council recommendations for the annual management measures, as well as public comments received on the proposed rule, when it implements fishing periods, fishing period limits, and any other directed commercial management measures. As noted previously, the Council has stated its intent to develop recommendations on annual directed fishery measures (*e.g.*, timing and duration of the fishing periods) through the same September and November meeting process currently utilized to provide recommendations to the IPHC at its annual meeting.

NMFS will determine directed commercial management measures, including fishing periods and fishing period limits, using similar decision criteria as the IPHC has used to set fishing periods and fishing period limits. The annual rulemaking process may include the announcement of more than one fishing period. In determining fishing period limits, NMFS will consider the directed commercial allocation, vessel class, the number of fishery permit applicants and projected number of participants per vessel class, the average catch of vessels compared to past fishing period limits, and other relevant factors. As the IPHC has done, in setting vessel limits NMFS will take into account the fact that smaller vessels are able to carry less gear and hold fewer Pacific halibut than larger vessels. The intent of these fishing period limits is to ensure that the Area 2A commercial directed fishery does not exceed the directed commercial allocation, while attempting to provide fair and equitable access across participants to an attainable amount of harvest.

As noted previously, NMFS is proposing a permit application deadline for the directed commercial fishery of February 15, which is over two months earlier than the date used by the IPHC. NMFS is proposing this earlier deadline to ensure that directed commercial fishery management measures are in place prior to the initial fishing period(s), traditionally opening in late June. The timing for the annual management measures rule with directed commercial

management measures will allow for consideration of any Council recommendations that take place at the September and November meetings, public comments by stakeholders, and the Area 2A catch limit recommendation from the IPHC annual meeting. NMFS intends to annually publish a proposed rule after the Area 2A directed commercial allocation is determined by the IPHC (usually in late January or early February), and will publish a final rule as far in advance of the first directed commercial fishing period as practicable.

During the annual fishing season NMFS may establish additional fishing periods beyond those implemented at the start of the fishing year. For example, if, after the initial directed commercial fishing period(s), the fishery has not attained nor is projected to have attained the directed commercial allocation, NMFS will determine whether additional fishing period(s) are warranted. The decision to add fishing periods in addition to what was published as part of the annual rule establishing the season's management measures will be based on landings information from state fish tickets collected from the initial fishing period(s), and the dual objectives of providing additional opportunity to fishery participants while limiting the risk of exceeding the directed commercial allocation. As soon as practicable after the fishing periods announced in the annual management measures rule have occurred and after analyzing landings data, if the Regional Administrator determines that enough allocation remains to provide additional opportunity across all participants and vessel classes, additional fishing period(s) and applicable fishing period limits will be announced in the **Federal Register**. In the event NMFS takes this inseason action to add additional fishing period(s), fishing period limits will not vary across vessel class and instead will be set at the same amount for each vessel class. Generally, fewer vessels participate in each fishing period as the season progresses (the first fishing period has the highest level of participation and most pounds landed, followed by the second fishing period, etc.). For its inseason management, NMFS is proposing to set vessel limits equal across all size classes when additional fishing periods are determined to be warranted, because the number of vessels participating in each vessel class varies by fishing period and is not the same

across years, and participants may choose to engage in any fishing period; thus there is a high degree of uncertainty in the number of participants per vessel class.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard for businesses, including their affiliates. A business primarily engaged in commercial fishing (North American Industry Classification System (NAICS) code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide (80 FR 81194, December 29, 2015). Previous analyses determined that charterboats are also small businesses (see 77 FR 5477 (February 3, 2012) and 76 FR 2876 (January 18, 2011)). Charter fishing operations are classified under NAICS code 487210, with a corresponding Small Business Association size standard of \$7.5 million in annual receipts.

This action would create a permitting system for the Pacific halibut commercial and recreational charter halibut fisheries in Area 2A off of Washington, Oregon, and California. In addition, this action would establish a regulatory framework for the Area 2A Pacific halibut directed commercial fishery that, consistent with the coastwide season dates set by the IPHC, allows NMFS to annually determine dates and times the fishery is open, fishing period limits, and a process to manage the fishery inseason. The proposed action was developed with input by industry, the public, and the IPHC, and was uncontroversial throughout the Council's public process.

In 2021, the IPHC issued 527 licenses to the recreational charter and commercial fleets for Area 2A. The IPHC issued 93 permits for recreational charter fishery, 190 permits for the directed commercial fishery, 44 permits for incidental commercial Pacific halibut caught in the sablefish, and 200 permits for incidental commercial Pacific halibut caught in the salmon troll fishery. Each affected vessel in these fisheries is a small business, and this proposed rule is considered to equally affect all of these small entities in the same manner, since all vessels participating in these Pacific halibut fisheries are required to have a permit. Additionally, since all vessels in the directed commercial fishery are small businesses, they would be equally affected by the regulatory framework and resulting management measures. Therefore, this rule would not create disproportionate costs between small and large vessels because there are no large entities involved in the halibut fisheries off of the West Coast.

The major impact of halibut management on small entities results from the annual IPHC catch limits for the fishery as a whole and for each IPHC regulatory area, determined independently from this proposed action. Profitability is more heavily influenced by the catch limit decision made by the IPHC, with sector and subarea allocations determined based on the Catch Sharing Plan framework and the allocation formula recommended by the Council. This proposed rule is unlikely to affect overall participation in the directed commercial fishery, since this action would maintain a permit requirement. This action is also unlikely to change the

profitability in the commercial and recreational charter fisheries, since profitability is dependent on the amount of allocation available and market forces independent of this action. Therefore, this action will equally impact all vessels in both commercial and recreational charter fisheries, and these revisions will not significantly reduce profit for a substantial number of small entities.

For these reasons, NMFS concludes that the proposed action, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This rule proposes to revise the existing requirements for the collection of information titled “Northwest Region Federal Fisheries Permits” (OMB Control Number 0648-0203) by adding a Pacific halibut permit for recreational charter fisheries and a Pacific halibut permit for the commercial fishery. This change will increase the number of respondents for this collection by 550 respondents annually. It will also increase the cost of the collection by \$29,150. Public reporting burden for the Pacific halibut permits is estimated to average 20 minutes per respondent, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information at www.reginfo.gov/public/do/PRAMain. Find this particular

information collection by selecting "Currently under Review" or by using the search function and entering the control number or title of the collection.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: July 20, 2022.

Kimberly Damon-Randall,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart E, is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773-773k.

2. In § 300.61, add definitions for “Fishing period,” “Fishing period limit,” “Permit,” “Vessel class” in alphabetical order to read as follows:

§ 300.61 Definitions.

* * * * *

Fishing period means, for purposes of commercial fishing in Commission regulatory Area 2A, dates and/or hours when fishing for Pacific halibut in Area 2A is allowed.

Fishing period limit means, for purposes of commercial fishing in Commission regulatory Area 2A, the maximum amount of Pacific halibut that may be retained and landed by a vessel during one fishing period in Area 2A.

* * * * *

Permit means, for purposes of commercial fishing in Commission regulatory Area 2A, a Pacific halibut fishing permit for Area 2A issued by NMFS pursuant to § 300.63(f).

* * * * *

Vessel class means, for purposes of commercial fishing in Commission regulatory Area 2A, a group of vessels within a specific range of overall length (in feet) (46 CFR 69.9), as designated by the letter A-H pursuant to § 300.63(g).

3. In § 300.63, add paragraphs (f) and (g) to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

* * * * *

(f) *Pacific Halibut Permits for IPHC Regulatory Area 2A*--(1) *General*. (i) This section applies to persons and vessels that fish for Pacific halibut, or land and retain Pacific halibut, in IPHC Regulatory Area 2A. No person shall fish for Pacific halibut from a vessel, nor land or retain Pacific halibut on board a vessel, used either for commercial fishing or as a recreational charter vessel in IPHC Regulatory Area 2A, unless the NMFS West Coast Region has issued a permit valid for fishing in IPHC Regulatory Area 2A for that vessel.

(ii) A permit issued for a vessel operating in the Pacific halibut fishery in IPHC Regulatory Area 2A shall be valid for one of the following, per paragraph (d) of this section:

(A) The incidental catch during the salmon troll fishery specified in paragraph (b)(2) of this section;

(B) The incidental catch during the sablefish fishery specified in paragraph (b)(3) of this section;

(C) The non-tribal directed commercial fishery during the fishing periods specified in paragraph (g)(1) of this section;

(D) Both the incidental catch during the sablefish fishery specified in paragraph (b)(3) of this section and the non-tribal directed commercial fishery during the fishing periods specified in paragraph (g)(1) of this section; or

(E) The recreational charter fishery.

(iii) A permit issued under paragraph (f) of this section is valid only for the vessel for which it is registered. A change in ownership, documentation, or name of the registered vessel, or transfer of the ownership of the registered vessel will render the permit invalid.

(iv) A vessel owner must contact NMFS if the vessel for which the permit is issued is sold, ownership of the vessel is transferred, the vessel is renamed, or any other reason for which the documentation of the vessel is changed as the change would invalidate the current permit. A new permit application is required if there is a change in any documentation of the vessel. To submit a new permit application follow the procedures outlined under paragraph (f)(2) of this section. If the documentation of the vessel is changed after the deadline to apply for a permit has passed as described at paragraph (f)(2)(ii) of this section, the vessel owner may contact NMFS and provide information on the reason for the documentation change and all permit application information described at paragraph (f)(2) of this section. NMFS may issue a permit, or decline to issue a permit and the applicant may appeal per paragraph (f)(3) of this section.

(v) A permit issued under paragraph (f) of this section must be carried on board that vessel at all times and the vessel operator shall allow its inspection by any authorized officer. The format of this permit may be electronic or paper.

(vi) No individual may alter, erase, mutilate, or forge any permit or document issued under this section. Any such permit or document that is intentionally altered, erased, mutilated, or forged is invalid.

(vii) Permits issued under paragraph (f) of this section are valid only during the calendar year (January 1-December 31) for which it was issued.

(viii) NMFS may suspend, revoke, or modify any permit issued under this section under policies and procedures in title 15 of the U.S. Code, 15 CFR part 904, or other applicable regulations in this chapter.

(2) *Applications*--(i) *Application form*. To obtain a permit, an individual must submit a complete permit application to the NMFS West Coast Region Sustainable Fisheries Division (NMFS) through the NOAA Fisheries Pacific halibut webpage at [*web address will be provided when the final rule is published*]. A complete application consists of:

(A) An application form that contains valid responses for all data fields, including information and signatures.

(B) A current copy of the U.S. Coast Guard Documentation Form or state registration form or current marine survey.

(C) Payment of required fees as discussed in paragraph (f)(2)(iv) of this section.

(D) Additional documentation NMFS may require as it deems necessary to make a determination on the application.

(ii) *Deadlines*. (A) Applications for permits for the directed commercial fishery in Area 2A must be received by NMFS no later than 2359 PST on February 15, or by 2359 PST the next business day in February if February 15 is a Saturday, Sunday, or Federal holiday.

(B) Applications for permits which allow for incidental catch of Pacific halibut during the salmon troll fishery and the sablefish primary fishery in Area 2A must be received by NMFS no later than 2359 PST March 1, or by 2359 PST the next business day in March if March 1 is a Saturday, Sunday, or Federal holiday.

(C) Applications for permits for recreational charter vessels which allow for catch of Pacific halibut during the recreational fishery must be received a minimum of 15 days before intending to participate in the fishery, to allow for processing the permit application.

(iii) *Application review and approval.* NMFS shall issue a vessel permit upon receipt of a completed permit application submitted on the NOAA Fisheries website no later than the day before the start date of the fishery the applicant selected. If the application is not approved, NMFS will issue an initial administrative decision (IAD) that will explain the denial in writing. The applicant may appeal NMFS' determination following the process at paragraph (f)(3) of this section. NMFS will decline to act on a permit application that is incomplete or if the vessel or vessel owner is subject to sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D.

(iv) *Permit fees.* The Regional Administrator may charge fees to cover administrative expenses related to processing and issuance of permits, processing change in ownership or change in vessel registration, divestiture, and appeals of permits. The amount of the fee is determined in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs. Full payment of the fee is required at the time a permit application is submitted.

(3) *Appeals.* In cases where the applicant disagrees with NMFS's decision on a permit application, the applicant may appeal that decision to the Regional Administrator. This paragraph (f)(3) describes the procedures for appealing the IAD on permit actions made in this title under this subpart.

(i) *Who may appeal?* Only an individual who received an IAD that disapproved any part of their application may file a written appeal. For purposes of this section, such individual will be referred to as the "permit applicant."

(ii) *Appeal process.* (A) The appeal must be in writing, must allege credible facts or circumstances to show why the criteria in this subpart have been met, and must include any

relevant information or documentation to support the appeal. The permit applicant may request an informal hearing on the appeal.

(B) Appeals must be mailed or faxed to: National Marine Fisheries Service, Northwest Region, Sustainable Fisheries Division, ATTN: Appeals, 7600 Sand Point Way NE., Seattle, WA, 98115; Fax: 206-526-6426; or delivered to National Marine Fisheries Service at the same address.

(C) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, and may request additional information to allow action on the appeal.

(D) Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the permit provisions set forth in this section at the time of the application, based upon information relative to the application on file at NMFS and any additional information submitted to or obtained by the Regional Administrator, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as the Regional Administrator deems appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons for the decision, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(E) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing to the applicant. The appellant, and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(F) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's decision will constitute the final administrative action by NMFS on the matter.

(iii) *Timing of appeals.* (A) For permit issued under paragraph (f) of this section, if an applicant appeals an IAD, the appeal must be postmarked, faxed, or hand delivered to NMFS no later than 60 calendar days after the date on the IAD. If the applicant does not appeal the IAD within 60 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(B) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Administrator for good cause, either upon his or her own motion or upon written request from the appellant stating the reason(s) therefore.

(iv) *Address of record.* For purposes of the appeals process, NMFS will establish as the address of record, the address used by the permit applicant in initial correspondence to NMFS. Notifications of all actions affecting the applicant after establishing an address of record will be mailed to that address, unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS.

(v) *Status of permits pending appeal.* (A) For all permit actions, the permit registration remains as it was prior to the request until the final decision has been made.

(B) [Reserved]

(g) *Non-tribal directed commercial fishery management.* Each year a portion of Area 2A's overall fishery limit is allocated consistent with the Pacific Fishery Management Council's Catch Sharing Plan to the non-tribal directed commercial fishery and published pursuant to §

300.62. The non-tribal directed commercial fishery takes place in the area south of Point Chehalis, WA (46°53.30' N lat.).

(1) *Management measures.* Annually, NMFS will determine and publish in the **Federal Register** annual management measures for the upcoming fishing year for the non-tribal directed commercial fishery. This will include dates and lengths for the fishing periods for the Area 2A non-tribal directed commercial fishery, as well as the associated fishing period limits.

(i) *Fishing periods.* NMFS will determine the fishing periods, *e.g.* dates and/or hours that permittees may legally harvest halibut in Area 2A, on an annual basis. This determination will take into account any recommendations provided by the Pacific Fishery Management Council and comments received by the public during the public comment period on the proposed annual management measures rule. The intent of these fishing periods is to ensure the Area 2A Pacific halibut directed commercial allocation is achieved but not exceeded.

(ii) *Fishing period limits.* NMFS will establish fishing period limits, *e.g.* the maximum amount of Pacific halibut that a vessel may retain and land during a specific fishing period, and assign those limits according to vessel class for each fishing period. Fishing period limits may be different across vessel classes (except as described in paragraph (g)(1)(iii) of this section). NMFS will determine fishing period limits following the considerations listed in paragraph (g)(1)(ii)(A) of this section. The intent of these fishing period limits is to ensure that the Area 2A commercial directed fishery does not exceed the directed commercial allocation, while attempting to provide fair and equitable access across fishery participants to an attainable amount of harvest. The limits will be published in annual management measures rules in the **Federal Register** along with a description of the considerations used to determine them.

(A) *Considerations.* When determining fishing period(s) and associated fishing period limits for the directed commercial fishery, NMFS will consider the following factors:

- (1) The directed commercial fishery allocation;
- (2) Vessel class;

(3) Number of fishery permit applicants and projected number of participants per vessel class;

(4) The average catch of vessels compared to past fishing period limits; and

(5) Other relevant factors.

(B) *Vessel classes*. Vessel classes are based on overall length (defined at 46 CFR 69.9)

shown in the following table:

Table 1 to paragraph (g)(1)(ii)(B)

Overall Length (in feet)	Vessel Class
1-25	A
26-30	B
31-35	C
36-40	D
41-45	E
46-50	F
51-55	G
56+	H

(iii) *Inseason action to add fishing periods and associated fishing period limits*. Fishing periods in addition to those originally implemented at the start of the fishing year may be warranted in order to provide the fishery with opportunity to achieve the Area 2A directed commercial fishery allocation, if performance of the fishery during the initial fishing period(s) is different than expected and the directed commercial allocation is not attained through the initial period(s). If NMFS makes the determination that sufficient allocation remains to warrant additional fishing period(s) without exceeding the allocation for the Area 2A directed commercial fishery, the additional fishing period(s) and fishing period limits may be added during the fishing year. If NMFS determines fishing period(s) in addition to those included in an annual management measures rule is warranted, NMFS will set the fishing period limits equal

across all vessel classes. The fishing period(s) and associated fishing period limit(s) will be announced in the **Federal Register** and concurrent publication on the hotline. If the amount of directed commercial allocation remaining is determined to be insufficient for an additional fishing period, the allocation is considered to be taken and the fishery will be closed, as described at paragraph (g)(2) of this section.

(2) *Automatic closure of the non-tribal directed commercial fishery.* The NMFS Regional Administrator or designee will initiate automatic management actions without prior public notice or opportunity to comment. These actions are nondiscretionary and the impacts must have been previously been taken into account.

(i) If NMFS determines that the non-tribal directed commercial fishery has attained its annual allocation or is projected to attain its allocation if additional fishing was to be allowed, the Regional Administrator will take automatic action to close the fishery, via announcement in the **Federal Register** and concurrent notification on the telephone hotline at 206-526-6667 or 800-662-9825.

(ii) [Reserved]